

IBLA 81-977, 81-1033
81-1034

Decided March 18, 1982

Appeals from decisions of the Medford District Office of the Bureau of Land Management to offer timber tract 81-27 for sale and deny protests of the sale.

Affirmed.

1. Timber Sales and Disposals

A BLM decision to proceed with a proposed timber sale, when reached after consideration of all relevant factors and supported by the record, will not be disturbed absent a showing that the decision is clearly erroneous.

APPEARANCES: Anne and Alan Winter and Conny and Walter Lindley, pro sese; Southern Oregon Timber Industries Association, as intervenor; John A. Ifft, Acting District Manager, BLM Medford District Office; Christopher Bratt, Chairman, Applegate Citizens Opposed to Toxic Sprays.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

By decisions dated July 21, 29, and 30, 1981, the District Manager of the Medford District Office of the Bureau of Land Management (BLM) respectively denied the protests of Mr. and Mrs. Walter Lindley, Mr. and Mrs. Alan Winter, and Applegate Citizens Opposed to Toxic Sprays (A.C.O.T.S.) against the proposed Rocky East Fork timber sale, tract 81-27. Those protestants appeal, and Southern Oregon Timber Industries Association has been granted leave to intervene in support of the sale. We consolidate the appeals sua sponte. 1/

1/ Although the appeals of Walter and Conny Lindley, IBLA 81-977, and Alan and Anne Winter, IBLA 81-1034, were filed separately, these appellants submitted a joint statement of reasons for their appeals. The appeal of A.C.O.T.S. was docketed as IBLA 81-1033.

Appellants raise several contentions, including some which we have addressed in earlier, related cases. For example, this Board determined that the Act of August 28, 1937, pertaining to "Oregon and California Railroad and Coos Bay Wagon Road Grant Lands" (O&C Act), as it addresses timber management, 43 U.S.C. § 1181a (1976), is wholly consistent with the relevant sections of the Federal Land Policy and Management Act of 1976 (FLPMA), which is fully applicable here. A.C.O.T.S., 60 IBLA 1, 4 (1981). Both of those acts require BLM to manage Federal timber lands on the basis of "multiple use" and "sustained yield," as defined in section 103 of FLPMA, 43 U.S.C. § 1702 (1976), which necessarily provides BLM with considerable discretion and latitude in deciding the most appropriate uses for the land. A.C.O.T.S., supra.

The thrust of appellants' arguments against BLM's actions is efficiently summarized in the following excerpt from the statement of reasons filed in support of the Winter and Lindley appeals:

Specialists' recommendations are ignored [by BLM]; mitigating measures outlined in the operating documents (Management Framework Plan or MFP, ES [the environmental impact statement], EA [the environmental assessment report], and Operations Inventory) are mentioned, but not followed. Analysis of previous sales is rarely made and almost never used as a guideline for the future. With the pressure of powerful economic interests, the BLM is reluctant even to call independent contractors on violations of contracts, thus virtually giving them a free hand. * * * BLM acts on the basis of arbitrary and capricious decisions, taking the entire interpretations of its guidelines into its own hands.

The Board recently held that

so long as the BLM policy or implementing action is based on a consideration of all relevant factors and is supported by the record, we will not disturb it absent a clear showing that it is contrary to statute or regulation or otherwise erroneous. Ernest J. Goertzen, 51 IBLA 196, 197 (1980) * * *.

A.C.O.T.S., supra at 5. It is pursuant to that established standard that we have reviewed appellants' arguments for the following submitted conclusions regarding the Rocky East Fork timber sale:

Pursuant to 43 CFR 4.21, award of the contract to the timber sale's high bidder was withheld by BLM pending disposition of these appeals.

1. [It] * * * will damage the watershed irreparably and jeopardize the private water sources of numerous adjacent landowners;
2. [It] * * * violates the O&C Act, the Federal Water Pollution Control Act and EPA guidelines;
3. The management for sustained yield of the forest land contained within this sale will result in an unnecessary burden on the taxpayers;
4. Environmental constraints suggested by staff specialists were not discussed nor adopted; and
5. In many instances, the silvicultural practices proposed by this sale are unsound and made without the consideration of all the relevant facts.

BLM has filed very substantial answers to appellants' statements of reasons that, under the established standard of review, we find sufficiently corroborative of BLM's decision respecting the timber sale. The record relating to this timber sale includes the environmental assessment which examined the impacts of the sale and measures available to mitigate adverse effects of timber operations and the sale prospectus which details terms of the sale including protective measures required to protect the environment. The case record supports a finding that the BLM decision is neither arbitrary nor an abuse of discretion. We have previously considered several of appellants' arguments, see, e.g., A.C.O.T.S., supra; Diana Coogle, 61 IBLA 393 (1982), and although we have considered all of appellants' contentions in these appeals, we find it unnecessary to discuss them all again here. However, we will briefly address the contentions that BLM's actions contravene the Federal Water Pollution Control Act and EPA guidelines, and place undue burdens on the nation's taxpayers.

The Federal Water Pollution Control Act, as amended, 33 U.S.C. § 1251 (1976), has as its objective "to restore and maintain the chemical, physical, and biological integrity of the Nation's waters." 33 U.S.C. § 1251(a) (1976). Appellants refer to several goals mentioned in that Act that BLM has allegedly violated. However, BLM's answer sets forth the stream protection measures it has implemented to protect water resources on this timber sale, and we are unconvinced that BLM's plan is in violation of the Federal Water Pollution Control Act. The same may be said of appellants' generalized arguments regarding BLM's alleged violation of EPA regulations. Finally, appellants have presented no cogent, incisive evidence that this timber sale, conducted pursuant to FLPMA, was excessive or contrary to the interests of taxpaying citizens of the United States.

We do not mean to imply that this appeal is frivolous, for the issues raised are legitimate concerns one in appellants' situation might have. But appellants' underlying wish is simply that this Board will order appellants' recommendations substituted for the actions and decisions of BLM, which has legal responsibility therefor. Mere disagreement with BLM timber management policies or actions, where, as here, the position of disagreement has only arguable basis, does not alter the Board's general obligation to rely upon BLM's expertise and to give deference to action it takes pursuant to defined statutory authority, where BLM's determinations are supportable. We do not find BLM's decision to hold the timber sale to be contrary to law or an abuse of discretion or otherwise clearly erroneous.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions appealed are affirmed.

Douglas E. Henriques
Administrative Judge

We concur:

Edward W. Stuebing
Administrative Judge

C. Randall Grant, Jr.
Administrative Judge

